FILED

UNITED STATES DISTRICT CO
ALBUQUERQUE, NEW MEXIC

## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

OCT 0 5 2000

CLERK
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## STIPULATED ORDER REGARDING EQUITABLE RELIEF

The Plaintiffs by and through their Class counsel Michael P. Gross and Co-Class counsel
C. Bryant Rogers and the Defendants by and through their counsel John. W. Zavitz in recognition
of the 10th Circuit Court of Appeals decision in the above-styled and numbered matter and in a
further attempt to resolve the equitable claims in this case amicably, the parties hereby agree to
entry of the following order:

## BE IT ORDERED, ADJUDGED AND DECREED

1. The parties are actively and diligently negotiating the equitable issues in this case. The parties anticipate being able to submit a settlement proposal to the Court by January 31, 2001. In the interim, the parties have agreed that for indirect cost rate proposals submitted to the Office of Inspector General, U.S. Department of the Interior until January 31, 2001, the Defendants shall calculate indirect costs rated for each class member (hereinafter "contractor", which term includes compactor) as follows:

- A. As it has done in the past, OIG shall negotiate 2 rate based upon the cost principles contained in the Office of Management and Budget Circular A-87 and on ASMB C-10, adopted April 8,1997, the "Implementation Guide for Office of Management and Budget Circular A-87."
- B. By agreeing to negotiate this rate, neither the Class, the Defendants, nor the individual class members shall be deemed to waive any rights or defenses regarding the negotiated rate or payment of contract support costs thereunder. By agreeing to negotiate this rate, neither the Class, the Defendants, nor the individual class members shall be deemed to admit or agree that this rate is in compliance or not in compliance with applicable law. The Office of Inspector General may correct any internal inconsistencies as regards OIG interpretations of OMB Cir. A-87 or ASMB C-10 as described at pp. 48-49 of the GAO Report as identified in the GAO Report of June 1999 in calculating the indirect cost rate under this paragraph, provided that nothing in this order shall be construed to prohibit class members affected thereby from challenging the legality or propriety of any such corrections.
- 2. The parties each reserve and do not waive their rights, claims, defenses, and demands in this action for FY 1992 forward. Until further order of the Court, the Defendants shall be permitted to reimburse contract support costs based on the individual indirect cost rates negotiated pursuant to subpart 1(A) above. Such payments shall not, however, in any way waive or diminish the Class' rights to further payments or damages in the event the Court rules in the Class' favor on the remaining damage claims in this case or those permitted to be added by Court Order. By

agreeing to reimburse contract support costs on the basis of the rate set forth in 1(A) above, neither the Class, the Defendants, nor the individual class members shall be deemed to admit or agree that this rate is in compliance or not in compliance with applicable law.

3. This order rescinds and replaces all previous orders of the Court respecting the method by which the Defendants calculate and reimburse contract support costs under the ISDA and shall be in effect only until January 31, 2001, or until superceding order of the Court, whichever occurs earlier, except that the duty specified in the previous order dated September 21, 1999 (Docket No. 336) to deliver demonstrative rates for FY 2000 to be calculated by OIG to Plaintiffs' counsel shall continue in effect.

C. LeROY HANSEN

C. LEROY HANSEN
U. S. DISTRICT COURT

Submitted:

Class Counsel

C. Bryant Hogers

John W. Zavita
Coursel for Defendants